

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SAMANTHA DONALDSON

Claimant

VS.

OLDHAM'S FARM SAUSAGE

Respondent

AND

SWIFT ECKRICH, INC.

Insurance Carrier

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Docket No. 1,007,305

ORDER

Claimant appeals the June 27, 2003 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant alleges accidental injury on or about August 26, 2002, while raising a large door. Respondent contends claimant failed to prove that she met with personal injury by accident and further failed to provide timely notice of accident.

ISSUES

- (1) Whether claimant met with personal injury by accident.
- (2) Whether timely notice was given.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed. Claimant alleges she suffered accidental injury to her neck and shoulders on or about August 26, 2002, while raising a large door at respondent's factory. Claimant testified that she felt her neck pop and later developed problems in her shoulders, arms and hands. Claimant testified she told her evening supervisor, Bill Riley, on the date that it happened, and also told Beth McManigal, her daytime supervisor, the next day. She also alleges she had a conversation with Mark McKenzie, the human resource officer, and was referred to a doctor identified as Dr. Patrinely.

However, when claimant was first examined by family practitioner Patricia H. Patrinely, D.O., on September 25, 2002, claimant gave Dr. Patrinely a history of having suffered injury in October of 2000, at which time she was diagnosed with neck strain. Dr. Patrinely's notes of September 25, 2002, contain no mention of an August 2002 accident with respondent. Claimant was later examined by her family doctor, Michael L. Keehn, M.D., of Family Practice Associates. Dr. Keehn's notes of September 30, 2002, discuss an injury for which claimant has had intermittent problems for about two years. There is again no mention of an August 26, 2002 accident.

Claimant was also examined at the Holton Community Hospital on October 2, 2002. Claimant provided them a history of injury approximately two years before, but also discussed lifting a door when she felt a pop in her neck in mid-September of 2002. Claimant again failed to mention any August 2002 accidental injury associated with her employment with respondent.

In employment covered by workers' compensation laws, an employer must compensate an employee for personal injuries incurred by the employee through accidents arising out of and in the course of employment.¹

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.²

In this instance, while claimant alleges she suffered accidental injury on or about August 26, 2002, the medical reports, created with the first three health care providers claimant was attended by, failed to make mention of an August 2002 injury. Neither Dr. Keehn's nor Dr. Patrinely's reports mention a 2002 accident of any kind. The Holton Community Hospital report mentions an accident in September 2002, which is hard to comprehend, as the report was created on October 2, 2002, less than a month and a half after the alleged accident.

With regard to whether claimant provided notice of accident, K.S.A. 44-520 requires that notice be given within ten days of the date of accident. Claimant alleged she told several employees of respondent immediately following the accident, but then, while being treated by several health care providers, failed to advise them of the accident or the circumstances surrounding that accident. It would appear from the Order of the Administrative Law Judge that he did not believe claimant's testimony regarding whom she told and when. When matters of credibility arise, the Board generally gives some deference to the administrative law judge due to his or her ability to observe the live

¹ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, Syl. ¶ 2, 899 P.2d 1058 (1995).

² See K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

testimony of witnesses. In this instance, the Board agrees that claimant's testimony, regarding what, if any, notice she may have provided, is not credible. The Board, therefore, finds that the Order of the Administrative Law Judge denying claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 27, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2003.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Director